IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3379 OF 2005

Pradeep Balvantrao Deshmukh ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.V.V.Purwant for the Applicant
Mr.S.R.Borulkar,P.P. for State

CORAM: A.S.OKA,J.
DATE : JULY 8,2005.

P.C.:

1. This Application is for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973. The offence alleged against the Applicant is punishable under Sections 306, 504, 201, 176 of the Indian Penal Code. The deceased was the daughter of the Applicant by name 'Dipti' who was studying in 11th Standard. The Applicant was employed as Bank Inspector in the Solapur District Central Cooperative Bank Ltd. On 25th March 2005 the daughter of the Applicant sustained burn injuries. She poured kerosene on her person and set herself ablaze. It is not in dispute that on the same day the daughter expired and her body was cremated between 11.00 a.m. to 12.30 p.m. Initially, on 27th March 2005 A.D.R. (i.e.accidental death) was recorded at Vairag Police Station. Subsequently, on 24th April 2005 F.I.R. was registered under sections 306,504, 201 of the Indian Penal Code by one Shahaji Jaysing Shinde, Assistant Inspector of Police attached to the said Police Station. It is true that the offence alleged against the Applicant is of very serious nature. However, there is an inordinate delay in registering

the F.I.R. The allegation of the Applicant is that the F.I.R. has been registered at the instance of disgruntled persons who are on inimical terms with the Applicant. The allegation made by the Applicant becomes relevant because of such a long delay in filing F.I.R.

2. This application was argued before me on various dates in the past. On 23rd June 2005 when this Application was argued before me, the learned A.P.P. showed me certain documents showing progress in the investigation. In the said documents I found that two different statements of the same witness were recorded on the same day. It was stated before me by the concerned Officer that the recording of the second statement was done at the instance of the Deputy Superintendent of Police. By order dated 23rd June 2005 the Deputy Superintendent of Police was directed to remain present in the Court on 30th June 2005. On 30th June 2005 the Deputy Superintendent of Police was directed to file an Affidavit. In the Affidavit dated 1st July 2005 an explanation has been offered by the Deputy Superintendent of Police. Considering the limited scope of adjudication in an Application under section 438, I am not really making in-depth examination of the statements recorded during the course of investigation. As the investigation is in progress, it is not possible at this stage to find any fault with the role played by the Deputy Superintendent of Police. Suffice it say that recording of two different statements of the same witness on the same day is a fact which will have to be taken into

consideration while deciding the application for grant of anticipatory bail. The learned Advocate for the Applicant pointed out various factors which show that the F.I.R. has been registered to harass the Applicant. The learned P.P. submitted that looking to the gravity of the allegations custodial interrogation is required.

3. With a view to examine the contentions raised by the parties, I have perused the statements of various witnesses and the F.I.R. It must be stated that number of statements have been recorded from 1st April 2005 onwards till 24th April 2005 i.e. date of registration of F.I.R. Not a single statement even prima facie makes out a case of the applicability of any of the three sections of the I.P.C. invoked against the Applicant. The statement of the brother of the deceased discloses that the Applicant had found fault with the deceased on the same day. The incident which is narrated by the brother is nothing but the routine incident of a father finding fault with his daughter or son. Only material which is available against the Applicant is in the form of statements of leader of political party and local M.L.A. which are recorded a day after the F.I.R. is registered. The said statements show that the Applicant is short tempered person and that he was having illicit relationship with the other women and was ill-treating his family members. It is stated that the deceased was objecting to the illicit relationship of the Applicant with other ladies. It will not be out of place to mention here that much

prior to the registration of F.I.R., a statement of even wife of the Applicant has been recorded which does not support the prosecution case. On the record of this Application, an Affidavit of the wife of the Applicant has been placed. The wife of the Applicant is represented by an Advocate. In Affidavit, the wife of the Applicant has completely supported the case of the Applicant.

4. No doubt gravity of offence alleged against the Applicant and the need for custodial interrogation are the only factors which are relevant for deciding the Application under Section 438 of the said Code. As held by the Apex Court, the object of Section 438 is to prevent undue harassment of the accused person from pre trial arrest and detention. The Apex Court has also held that the fact that either the Court has taken cognizance of the offence or that the investigating agency has filed charge sheet would not by itself prevent the Court concerned from granting anticipatory bail in appropriate cases. Keeping in mind the principles laid down by the Apex Court, case of the Applicant will have to be examined. From the date of death of the daughter of the Applicant i.e. from 25th March 2005 till 24th April 2005 the statements of large number of witnesses including the Applicant's wife, Applicant's son have been recorded. However, nothing was stated or found against the Applicant. After the F.I.R. is belatedly registered, it appears that two local political leaders have come forwarded and stated that the Applicant was having illicit relationship with other ladies and was

ill-treating his family members. They have alleged that the deceased never liked this conduct of the Applicant as a result the applicant used to harass her.

5. There is hardly any material on record to attract any of the Sections of the I.P.C. which are alleged against the Applicant. Much can be said about the manner in which the entire process of the investigation has been initiated against the Applicant. However, I am refraining from making any further observations as it may affect the trial. The only conclusion which can be drawn is that this is a fit case where considering the object of Section 438, power will have to be exercised to prevent undue harassment to the Applicant by pre trial arrest and detention. While enlarging the Applicant on anticipatory bail, stringent conditions will have to be imposed to ensure that the Applicant should be available in the concerned Police Station as and when called upon to do so and to ensure that he will cooperate with the Investigating Officer for the purpose of investigation.

7. Hence I pass the following order :

i) In the event of the arrest of the Applicant in connection with C.R.No.36 of 2005 registered with Vairag Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees twenty five thousand only) with two local sureties in the like amount.

ii) The Bail is granted subject to condition that the

Applicant will attend the concerned Police Station as and when called upon to do so for the purpose of investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE